

Ruling 422-96-7

Issued: October 13, 1996

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A ruling has been requested concerning the applicability of certain provisions of the Gross Receipts and Compensating Tax Act to the following facts:

X is located in New Mexico and operates a business which sells advertising throughout the United States. X works with Y, a California company, that places the ads on the internet. With respect to the internet ads, X collects the fee from the person for whom the ad is being placed, retains a percentage of the fee and sends the remaining portion to Y.

X asks if its receipts from these advertising sales are subject to gross receipts tax.

Section 7-9-4 NMSA 1978 states: "For the privilege of engaging in business, an excise tax equal to five percent of gross receipts is imposed on any person engaging in business in New Mexico."

Section 7-9-3(E) NMSA 1978 defines "engaging in business" as "carrying on or causing to be carried on any activity with the purpose of direct or indirect benefit".

"Gross receipts" is defined as:

The total amount of money or the value of other consideration received from selling property in New Mexico, from leasing property employed in New Mexico, from selling services performed outside New Mexico the product of which is initially used in New Mexico or from performing services in New Mexico. (Section 7-9-3(F) NMSA 1978)

X is engaging in business in New Mexico and derives receipts from performing advertising services. X, therefore, has gross receipts and is subject to gross receipts tax on those receipts unless a specific exemption or deduction applies.

Section 7-9-57 NMSA 1978 provides a deduction from gross receipts for receipts from performing a service for an out-of-state buyer if the product of the service is delivered to the buyer outside of New Mexico and if the buyer initially uses the product of the service outside of New Mexico. X's receipts from selling ads to out-of-state advertisers are deductible under Section 7-9-57 NMSA 1978 since both delivery and initial use of the product of the service occur outside New Mexico when the ad is placed on the internet by Y.

X's receipts from selling ads to advertisers located within New Mexico are receipts from performing services in New Mexico and subject to gross receipts tax. X's receipts are the total amount X charges for its advertising services even though X remits a portion of those receipts to Y.